

MINUTES
Montana Fish, Wildlife & Parks Commission Meeting
Region 2 Headquarters
3201 Spurgin Road
Missoula, MT 59804

SEPTEMBER 9, 2004

Commission Members Present: Dan Walker, Chairman; Tim Mulligan, Vice-Chairman; John Lane; Mike Murphy; John Brenden.

Fish, Wildlife & Parks Staff: Director Jeff Hagener; FWP personnel.

Guests: Daryl Gadbow, Missoulain; Tom Esch, Attorney for Springbrook Ranch; Curtis Spindler, MT Bass Federation; Russ Copeland, MOGA; Rich Lane; Tim Love, USFS Seeley Lake District Ranger.

Topics of Discussion:

- 1. Opening - Pledge of Allegiance**
- 2. Approval of August 5, 2004 Commission Minutes**
- 3. Approval of Commission Expenses through August 31, 2004**
- 4. Bear Paw Battlefield Lease Extension to National Park Service – Final**
- 5. Seeley Lake No Wake Zone on North End of Lake – Tentative**
- 6. July 2004 Future Fisheries Funding Cycle Projects – Final**
- 7. Reconsideration of Policy to Allow Introduction of Walleye West of the Continental Divide – Final**
- 8. 2005 Non-Resident Combo License Rule – Tentative**
- 9. Rules for Moose & Sheep Auction and for Deer & Elk Auction/Lottery – Final**
- 10. HB454 Swanz Hunting Access Agreements**
- 11. Proposal to Abandon Lone Pine Game Preserve – Final**
- 12. Confederated Salish & Kootenai Tribes 2004-2005 Migratory Waterfowl Regulations – Final.**
- 13. Public Opportunity to Address Issues Not Discussed at this Meeting**

1. Opening - Pledge of Allegiance. Chairman Dan Walker called the meeting to order at 8:00 a.m. and led the Pledge of Allegiance.

2. Approval of August 5, 2004 Commission Minutes.

Action: Lane moved and Mulligan seconded the motion to approve the minutes of the August 5, 2004 meeting. Motion carried.

3. Approval of Commission Expenses through August 31, 2004.

Action: Murphy moved and Lane seconded the motion to approve the Commission expenses through August 31, 2004 as presented. Motion carried.

4. Bear Paw Battlefield Lease Extension to National Park Service – Final. The Bearpaw Battlefield is one of nineteen battle sites that make up the Chief Joseph Trail. **Chas VanGenderen, FWP Parks Division Operations and Management Bureau Chief**, explained that FWP owns fee title to the Bear Paw Battlefield, but has leased the site to the National Park Service since 1994 under a 10-year lease agreement. The National Park Service manages all of the other publicly accessible sites, therefore leasing this site to them provides consistency in management of the entire Chief Joseph Trail park system.

The existing lease agreement between FWP and the National Park Service expires September 16, 2004, and both parties wish to renew the lease while they negotiate a land exchange that would transfer ownership of Bear Paw to the Park Service and provide FWP with desired property. The original lease went through the MEPA process, and since there are no changes to the lease, this process would not be required for the renewal. The State of Montana cannot directly sell the land to the National Park Service. If the lease is not approved, management of the site would revert to the Parks Division, incurring sizeable costs to FWP. Additionally, denial of the lease would cease plans by the National Parks Service to develop an interpretive center on the site.

Action: Lane moved and Murphy seconded the motion to approve the lease between FWP and the National Park Service (NPS) pertaining to the Bear Paw Battlefield to allow the NPS to continue to operate the site until a land exchange can be consummated. Motion carried.

5. Seeley Lake No Wake Zone on North End of Lake – Tentative. **Ron Jendro, FWP Enforcement Division Recreation Program Manager**, explained that Seeley Lake is a popular lake that provides a multitude of opportunities for recreational purposes, which in turn generates conflicts between recreational user groups, and creates perilous conditions for wildlife that dwell there. From a biological standpoint, only one pair of the original three pairs of loons remain nesting in the north end of the lake. It the desire of FWP to recruit additional loons, which may be difficult due to heavy traffic and wakes created by motorboats. The proposed 38-acre no-wake zone at the north end of the lake would reduce conflicts between the canoe and motorboat users, and would lessen the impact on loon nesting.

Mack Long, FWP Region 2 Supervisor, displayed a map of Seeley Lake, provided by the Seeley Lake Ranger District. Seeley Lake is 1,100 acres in size, and the proposed no-wake zone would only entail 38 acres on the north end. The water there is very weedy and not suitable for water sports, but is suitable for fishing. Boating and skiing opportunities would still be available farther from shore.

Loon nesting is of vital importance, and this environment is ideal. The no-wake zone would allow for essential nesting, rearing, and feeding habitat for the loons, and still allow fishermen in with a no-wake condition. Long said the Department has received several letters in support of this project.

Tim Love, USFS Seeley Lake District Ranger, has worked the district since 1995, and lives at the ranger station. He said over that length of time, the lake has greatly increased in recreational use. He said the USFS has come to the conclusion that a no-wake zone needs to be established to protect the loons. Canoe traffic and fishermen would still be able to use the area, and motorized traffic would still have plenty of room on Seeley Lake where their wakes would not disturb the loons.

Long reiterated that FWP and the USFS are trying to recruit new nesting loons. Love said loons “marry” a lake – they come back to the same one every year. Long stated that the no-wake zone would create only a minimal impact on recreationists, and he added that in talking with people on the lake over the last few months, including motorboat users, they have received 100% support for this proposal.

Action: Murphy moved and Mulligan seconded the motion to approve a proposed ARM restriction that would make the area north of a line from Rice Creek to Deer Creek (approximately 38-acres) on the north end of Seeley Lake a no-wake area. Motion carried.

6. July 2004 Future Fisheries Funding Cycle Projects – Final. The Future Fisheries program provides funding for habitat restoration and enhancement projects on streams, rivers, and lakes in Montana. Proposed projects, which are reviewed twice a year by the Review Panel and by the Commission, must meet prescribed criteria. **Glenn Phillips, FWP Fisheries Division Habitat Protection Bureau Chief**, said twelve project proposals were submitted to the Future Fisheries Review Panel for consideration, and he added that this was the fewest number of project proposals they had ever received.

Brenden commented that he found it ironic that some spokespersons at the walleye hearing the night before claimed the fishery in Region 1 was not as good as it could be, yet there were no applications for improvement. Phillips replied that BPA is relied upon heavily in Region 1, therefore, fewer applications are received from that area. Hagener pointed out that one of the applications was, indeed, from Region 1.

Mulligan questioned if the BLM is providing any funding for Project #44, the Missouri River project downstream from Holter Dam. **Mark Lere, FWP Habitat Restoration Program Officer**, said the riparian fencing includes a section on BLM land, however there is no money added as BLM’s process is lengthy and would delay the project. Mulligan stated that FWP should not be the funding source for BLM, they need to partner with the Department in the future.

Murphy questioned Project #43, LaVelle Creek. Phillips replied that the LaVelle Creek project was tabled due to lack of information, but it may come back for re-evaluation at a later date when the applicants can provide more in-depth information.

Walker noted that Project #38, Blackfoot River, was a significant expenditure, and asked for more information. Phillips said it is a complicated project. The location where the pivot irrigation system would be installed would save a minimal amount of water, however, the reduced diversion into the Clearwater ditch would save a significant amount of water. When Mulligan asked if this would be a permanent change in use, Lere replied that lease or conversion could go up to as much as 30 years. Lane stated that by converting from wheel line irrigation to pivot irrigation, the same acreage is not being addressed. Brenden said there are trade-offs with the new technology in pivot systems. When asked if project maintenance is a legitimate use of funds, Phillips replied that is was.

Phillips noted that he had requested the Region 2 staff involved with this project to attend this meeting to provide additional information, however they were unavailable.

Action: Walker moved and Lane seconded the motion to approve the funding recommendations as submitted by the Department with the exception of Project #38. Motion carried.

Action: Brenden moved and Walker seconded the motion to table Project #38, the Blackfoot River project in Powell and Missoula Counties. Motion carried.

7. Reconsideration of Policy to Allow Introduction of Walleye West of the Continental Divide – Final. In 1989, following an environmental assessment relative to the introduction of walleye beyond their current range, the FWP Commission adopted a policy banning the introduction of walleye west of the Continental Divide. Prior to the July 2004 Commission meeting, the Commission was asked by parties wanting walleyes in the Region 1 area to reverse the ban. **Ken McDonald, FWP Fisheries Division Management Bureau Chief**, said since the July meeting, when the Commission passed the motion to introduce sterile walleye into a closed basin system, the Department published news releases requesting public comment, culminating after the public hearing on September 8. FWP received over 130 written comments, and 36 men and women presented their views at the hearing. The overwhelming majority of comments objected to the introduction of walleye west of the divide. Editorials in the major newspapers in western Montana also expressed opposition to the proposal.

Twelve potential closed basin lakes were identified, eleven of which are in Region 1. McDonald said each lake is unique with its own set of circumstances.

Brenden expressed displeasure that hearings were not held in Kalispell where he feels the majority of affected people reside. Additional time is needed to inform more people of the proposal.

Action: Brenden moved and Murphy seconded the motion to postpone action on this topic until the October Commission meeting in Helena.

Discussion on Motion: McDonald said the main issues that have already been identified will remain consistent, that new issues are unlikely to surface, so collecting additional public input will probably not result in any new information or issues.

Mulligan said postponing the decision will not benefit anyone, the decision needs to be made at this meeting. Comments have been received via letters, the internet, and by telephone, reflecting the opinions of a large segment of the public.

Brenden disagreed with Mulligan. He feels the news articles are biased and should not contain statistics that can potentially influence people's decisions. He believes in adaptive management. Change is eminent, and the Department has to change with the rest of the world. The distant future of Montana's fisheries needs to be kept in mind. He feels this issue is being rushed.

Mulligan agrees with the concept of adaptive management, but the key is not to make the same mistakes over again. The biology of rivers has been studied and is now more fully understood, thus biologists know what will work and what will not work. Mulligan said the intent of the hearing process has been met, and the people have spoken loudly.

Walker asked what the status is in the development of sterile fish. McDonald said a pressure test was conducted at Fort Peck during the egg take. There were 3 treatments with 3 different pressures, but nothing definitive as of yet. He said the Hatchery Bureau has purchased a pressure chamber and will continue experimenting.

Lane said he could see no reason to delay the vote on this issue. Comments have been received from many varied sources, indicating the public's awareness of the issue.

Action on Motion: Motion failed. One in favor (Brenden) – four opposed (Walker, Mulligan, Murphy and Lane).

Action: Mulligan moved and Lane seconded the motion to drop the issue and leave the current policy in place. Motion carried. Four in favor (Walker, Mulligan, Murphy and Lane) – one opposed (Brenden).

Brenden stated that he does not want to see the Department set precedents that limit the introduction of warm water species west of the Continental Divide.

8. 2005 Non-Resident Combo License Rule – Tentative. Dan Ellison, FWP Administration and Finance Division Administrator, explained that the rule-making process for outfitter sponsored B-10 and B-11 licenses is an annual request made to the Commission. The agency has developed a five-member Variable Licensing Council to review quotas and costs of licenses. The Council was unanimous in their decision to recommend 5,750 B-10 Outfitter Sponsored Big Game licenses at a cost of \$975, and 2,400 B-11 Outfitter Sponsored Deer Combination licenses at a cost of \$775.

Hank Worsch, FWP Administration and Finance Division Licensing Bureau Chief, explained that in the current annual rule, it says “*up to 60% of the separated licenses may be issued to hunters....*”, however there are times they are not all issued, and the Department is limited on what can be done with them. It is proposed to change the rule to say “*the remaining separated licenses may be issued as General Deer Combination Licenses subject to restrictions specified by the FWP Commission for purposes of deer management*”.

Hagener said additional changes to the rules concern refunded licenses that are not being reissued at this time. The rule modification would allow the sale of refunded licenses “*that occur after September 1. Refunded outfitter sponsored licenses will be reissued from an outfitter sponsored alternate list only if the refund causes the number to fall below the target quota*”.

Mulligan asked if these licenses would have to be sold by a specific date, to which Worsch replied that September 1st is the cut-off date. These can go into the surplus category, but not at the outfitter sponsored price. Worsch said the outfitters are in favor of the proposed rule. Hagener said this will create \$50,000 for block management, and will allow the Department to reach the target numbers.

Action: Murphy moved and Brenden seconded the motion to approve the proposed annual 2005 Non-Resident Combo License Rule and proceed with public comment. Motion carried.

Walker said Montana has resident landowner sponsored licenses for deer, but does not provide for non-resident landowners. To expand the program to include all landowners would take legislation. **Bob Lane, FWP Legal Counsel,** agreed that it would require a statutory procedure.

Walker asked the Commissioners to think about this, and visit with legislators about this subject. He wants to avoid any conjecture that Montana is discriminatory.

Bob Lane said it is difficult to make any predictions based on the Arizona discrimination lawsuit. He said the less Montana appears to discriminate against non-residents, the less likely a lawsuit will be filed against the Department.

Mulligan said he does not want to see the Department do something that triggers a cycle where non-residents purchase land in Montana for the purpose of obtaining the benefits of the landowner sponsored licenses. That could evolve from deer licenses to elk licenses.

Hagener said that one PLPW recommendation was to provide a free license to a designated family member, whether resident or non-resident, in addition to allowing landowners their present payment when enrolled in Block Management.

9. Rules for Moose & Sheep Auction and for Deer & Elk Auction/Lottery – Final. Don Childress, FWP Wildlife Division Administrator, said these rules originally were proposed as ARM Rules, but are now proposed as annual rules as recommended by the Commission. There are no changes from the original proposal, other than the date change to 2005. If passed by the Commission today, conservation organizations will immediately be notified. Walker asked when an individual person could make a bid. Childress said if no organizations apply, then and only then, can an individual apply.

Action: Lane moved and Murphy seconded the motion to approve the annual rule for the moose and sheep auction, and for the deer and elk auction or lottery. Motion carried.

10. HB454 Swanz Hunting Access Agreements. Don Childress, FWP Wildlife Division Administrator, explained that 87-2-513, MCA, grants authority to FWP to enter into access agreements, for management purposes only, with landowners who provide free public elk hunting, and meet required criteria. Landowners have the opportunity to specify the areas where they will allow hunting, the numbers of days they will allow people on their land, and any other specifications the two parties agree on. Swanz has allowed access in the past, and this proposed contract is no different than in the past. Childress said the only restriction last year involved fire restrictions. FWP contacted the permit holders from last year, and their comments were all positive. This type of access agreement promotes management as well as access. Mulligan asked if HB454 access agreements are specific to resident landowners. Lane and Childress will check into it.

Action: Brenden moved and Lane seconded the motion to approve the Swanz Hunting Access Agreement for the 2004 general fall hunting season. Motion carried.

11. Proposal to Abandon Lone Pine Game Preserve – Final. Don Childress, FWP Wildlife Division Administrator, said in March, 2004, Jim Watson and Carol Bibler, owners of Spring Brook Ranch near Kalispell, petitioned FWP to remove their ranch from the Lone Pine Game Preserve. Watson and Bibler wish to operate under their own land management practices.

The Department received fifty-four comments, with issues focusing on firearms and shooting safety. The Department's recommendation is to move forward with abandoning the preserve, recognizing the issues of public safety, as well as opportunities for initiating weapons restricted areas. The preserve was originally developed for management purposes, which is no longer an issue.

Tom Esch, Attorney representing Spring Brook Ranch, said firearms restrictions would be considered by the landowners. The preserve is in HD120, and some restrictions are already in place in this district. They would like to see it go a year or two with no restrictions to see how it works. All of this land is private land, landowners could regulate the harvest of wildlife on their land. Esch requested that the Commission consider managing this area in the same manner as is done on the other portion of HD120. Then, if necessary, firearms restrictions could be set in place.

Murphy said if homeowners want firearms restrictions, they should promote them, not the Department. Brenden agreed with Murphy saying he does not want to instill yet more regulations by government. Landowners should be able to decide for themselves what they want to do.

Action: Murphy moved and Walker seconded the motion to approve abandonment of Lone Pine Game Preserve by repealing ARM 12.9.204. Motion carried.

The Department will notify Mr. Esch when this becomes effective. Hunting will be allowed this fall, and the legal notice will be put in paper.

12. Confederated Salish & Kootenai Tribes 2004-2005 Migratory Waterfowl Regulations – Final. Don Childress, FWP Wildlife Division Administrator, said the Tribes ask for Commission concurrence on the adoption of their 2004-2005 Migratory Waterfowl season regulations, hours, and limits for the Flathead Indian Reservation.

Action: Murphy moved and Lane seconded the motion to approve the Tribal Migratory Waterfowl Regulations as proposed. Motion carried.

~~~~~ Additional Information ~~~~~

Childress stated that following negotiations with CMR regarding antlerless elk hunting permits in HD410, the CMR will remain open during all 5 weeks of hunting season. FWP and the USFWS committed to meeting in the near future to revisit the existing MOU and better understand both parties' objectives.

Hagener stated that the Department of Livestock and FWP have been working to resolve concerns regarding bison hazing and hunting. The Bison Hunt EA Record of Decision is currently being drafted and will be presented to the Commission for concurrence in October.

**13. Public Opportunity to Address Issues Not Discussed at this Meeting.** No comments.

Meeting adjourned at 10:31 p.m.

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Dan Walker, Chairman

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M. Jeff Hagener, Director